

# MISSISSIPPI DIVISION OF MEDICAID

## Eligibility Policy and Procedures Manual

### CHAPTER 300 - Resources

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#### **304.01.03 EXCEPTIONS TO TREATMENT OF TRUSTS**

The rules concerning treatment of trusts do not apply to any of the following types of trusts, i.e., the trusts discussed below are treated differently in determining eligibility for Medicaid. Funds entering and leaving these trusts are generally treated according to SSI rules or more liberal rules under Section 1902(r) (2) of the Act, as appropriate.

As noted in each exception below, one common feature of all of these excepted trusts is a requirement that the trust provide that, upon the death of the individual, any funds remaining in the trust go to the Division of Medicaid, up to the amount paid in Medicaid benefits on the individual's behalf.

#### **304.01.03A SPECIAL NEEDS TRUSTS**

A trust containing the assets of an individual under age 65 who is disabled (as defined by the SSI program) and which is established **for the sole benefit of** the individual by a parent, grandparent, legal guardian of the individual, or a court is often referred to as a Special Needs Trust. In addition to the assets of the individual, the trust may also contain the assets of individuals other than the disabled individual.

To qualify for an exception to the rules governing trusts in this section, the Special Needs Trust must contain a provision stating that, upon the death of the individual, the State receives all amounts remaining in the trust, up to an amount equal to the total amount of medical assistance paid on behalf of the individual.

When a Special Needs Trust is established for a disabled individual under age 65, the exception for the trust discussed above continues even after the individual becomes age 65. However, such a trust cannot be added to or otherwise augmented after the individual reaches age 65. Any such addition or augmentation after age 65 involves assets that were not the assets of an individual under 65 and therefore, those assets are not subject to the exemption discussed in this section.

To qualify for this exception to the rules governing trusts, the trust must be established for a disabled individual, as defined under the SSI Program. When the individual in question is receiving either Title II or SSI benefits as a disabled individual, accept the disability determination made for those programs. If the individual is not receiving those benefits, make a determination concerning the individual's disability.

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### **SPECIAL NEEDS TRUSTS** (Continued)

Establishment of a trust as described above does not constitute a transfer of assets for less than fair market value if the transfer is made into a trust established solely for the benefit of a disabled individual under age 65. However, if the trust is not solely for the benefit of the disabled person or if the disabled person is over age 65 transfer penalties may apply.

#### **304.01.03B POOLED TRUSTS**

A pooled trust is a trust containing the assets of a disabled individual as defined by the SSI Program in Section 1614(a)(3) of the Act, that meets the following conditions:

- The trust is established and managed by a non-profit association;
- A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;
- Accounts in the trust are established solely for the benefit of disabled individuals by the individual, by the parent, grandparent, legal guardian of the individual, or by a court; and,
- To the extent that any amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the Division of Medicaid the amount remaining in the account up to the amount equal to the total amount of medical assistance paid on behalf of the beneficiary. To meet this requirement, the trust must include a provision specifically providing for such payment.

To qualify as an excepted trust, the trust account must be established for a disabled individual, as defined in Section 1614(a)(3) of the Act. When the individual in question is receiving either Title II or SSI benefits as a disabled individual, accept the disability determination made for those programs. If the individual is not receiving those benefits, make a determination concerning the individual's disability.

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### **304.01.03C INCOME TRUSTS**

This type of trust established for the benefit of the individual is limited to institutionalized clients, not those in a hospital setting. A recipient participating in the Home and Community Based Waiver program (HCBS) may also utilize an Income Trust for eligibility purposes. An Income Trust document is required. The Income Trust must meet the following requirements:

- The trust is composed only of the pension(s), Social Security, and other income of the individual, including accumulated interest in the trust; and,
- Upon the death of the individual, the Division of Medicaid receives all amounts remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of the individual. To qualify for this exception, the trust must include a provision to this effect.

The Income Trust provision is designed to assist individuals who have too much income to qualify for Medicaid institutional care, but not enough income to pay private pay for the long term care needed. It is intended for individuals with excess recurring monthly income that causes ineligibility. The Income Trust is a binding document that directs how income received each month will be obligated. As a result, an Income Trust will not be allowed on a temporary or intermittent basis with the following exception: an Income Trust for monthly excess income that will be reduced at a future date will be allowed during the period of time the monthly income exceeds the Medicaid institutional limit.

For example, a nursing home applicant with excess income that includes a VA pension will be allowed an Income Trust until such time as the VA reduces the pension payment to \$90, thereby eliminating the need for an Income Trust. Income received once or twice per year or on a quarterly basis does not qualify for the use of an Income Trust. This type of irregular and infrequent income should be converted to monthly income before allowing an Income Trust to be established.

#### **Income Included in an Income Trust**

To qualify for this exception, the Income Trust must be composed only of income to the individual, from whatever source. The trust may contain accumulated income, i.e., income that has not been paid out of the trust. However, no resources, as defined by SSI, may be used to establish or augment the trust. Inclusion of resources voids this exception.

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#### **Income Included in an Income Trust(Continued)**

All individuals with an income Trust who receive a 13<sup>th</sup> check from State Retirement will be required to have the 13<sup>th</sup> check averaged over the 12-month period. The representative for the recipient can have this change made by contacting the State Retirement office.

#### **Income Not Included in an Income Trust**

An individual's total income must go into the Income Trust each month. The only exception is for the types of VA payments that are not considered income, i.e., VA Reduced Pension benefits, VA Aid & Attendance payments and VA Pension payments attributed to Unreimbursed Medical Expenses.

#### **Funding the Income Trust Account**

All of a nursing home recipient's income, less deductions authorized by Medicaid, will be paid to the nursing home. In most cases no funds will be retained in the Income Trust account.

The recipient's cost of care, referred to as Medicaid Income, will be determined by the total gross income and the daily rate that Medicaid pays the nursing facility where the recipient resides. However, if the rate for the facility is less than the recipient's income, the recipient's excess income will fund an income trust account.

**Example:** The recipient's countable income is \$3,800 per month. The Medicaid daily rate for the facility where the recipient resides is \$3,500 per month. The excess income of \$300 per month must fund an Income Trust account. This example applies if income for only one month exceeds the Medicaid daily rate or if the income for all the months exceeds the Medicaid daily rate.

However, when the rate for the facility is more than the recipient's countable income, all of the recipient's income is payable to the facility and the Income Trust account will not be funded.

**Example:** The recipient's countable income is \$2,500 per month. The Medicaid daily rate for the facility where the recipient resides is \$4,500 per month. The recipient will pay the facility \$2,500, and the Income Trust account will not be needed. However, a trust document is still required.

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### **Home and Community Based Waiver (HCBS)**

For individuals in the Home and Community Based Waiver (HCBS), the difference between an individual's total income and an amount that is \$1 less than the current institutional income limit should fund the Income Trust account. The only allowable expenses from the amount funding the trust are actual expenses associated with the establishing the trust, which is limited to \$500 or actual cost if less than \$500. Bank charges associated with maintain trust accounts are limited to \$10 per month.

### **Other Income Trust Issues**

- Trusts that are not properly funded into an Income Trust account do not meet the criteria for a trust exception.
- When an Income Trust is no longer needed due to the client's death, ineligibility or some other change, the Division of Medicaid receives all amounts remaining in the trust account, up to an amount equal to the total medical assistance paid on behalf of the individual. To qualify for this exception, the trust must include a provision to this effect.
- The Income Trust agreement which is located immediately following this section can be copied for execution by the recipient and trustee. The only changes to this legally binding document that the Division of Medicaid will accept will be to add language regarding a successor trustee or co-trustee. Changes must be approved by the Legal Bureau prior to execution.
- Income Trust cases have the same rules of timeliness as all other ABD cases. Unless establishing disability is involved, Income Trust cases are subject to the 45-day time limit. Work with someone who is making an effort to do what is required, but do not hold a case pending for them to establish the trust.

**NOTE:** The recipient cannot be the trustee.

- The Income Trust case cannot be approved any earlier than the effective date of the trust. If the recipient later decides that coverage in a retro period is needed, the document must be amended. If there is not an effective date, then the trust begins the month it is signed and dated.
- It is possible to have an Income Trust during a transfer period. The nursing home will be paid private pay by the client and all the income will be used to pay private pay. This allows the client to be Medicaid-eligible and the penalty period can begin.

## **LONG-TERM CARE INCOME TRUST**

### **THE \_\_\_\_\_ INCOME TRUST**

WHEREAS, \_\_\_\_\_, hereinafter referred to as the Settlor,  
now has a monthly income that exceeds the current Medicaid income limits, and;

WHEREAS, the total monthly income received by Settlor is not sufficient to pay for  
expenses associated with long-term care services and related services, and;

WHEREAS, Settlor's other assets have been exhausted by Settlor's long-term care  
expenses, and;

WHEREAS, the principal purpose of this Trust is to receive all income payments due  
Settlor in excess of the Settlor's cost of care, including Social Security benefits, retirement  
benefits, interest, dividends, or other income. The Settlor's cost of care will be determined  
by the daily rate that Medicaid pays the nursing facility in which the Settlor resides. If the  
rate for the facility is less than the Settlor's income, the excess income will be used to fund  
the income trust. If the rate for the facility is more than the Settlor's income, the Settlor's  
total income, less authorized deductions, will be paid to the nursing facility. Any income in  
excess of the Settlor's cost of care will be retained as part of the Trust.

**WITNESSETH:**

This \_\_\_\_\_ Income Trust Agreement is entered into between  
\_\_\_\_\_, "Settlor", and \_\_\_\_\_, "Trustee", who agree as follows:

- (A) The Trustee shall place all income in excess of the Settlor's cost of care into the Trust, and the Trustee shall hold such income under the following terms and conditions:
  - (1) Trustee shall retain the income in excess of the Settler's cost of care in the Income Trust Account.
  - (2) At the time of each review of the Settlor's Medicaid eligibility (at least annually) while this trust is in existence, if the Settlor's income exceeds the cost of care, the Division of Medicaid will notify the Trustee of the amount that should be accumulated in the trust. The Trustee will then be requested to make payment of this amount to the Division of Medicaid up to the total amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid to Medicaid. Failure to make the requested payments may result in the loss of Medicaid eligibility for the Settlor.
  - (3) This trust will terminate upon the death of the Settlor; when the Settlor's Medicaid eligibility is terminated; when the Settlor's income no longer exceeds the current Medicaid income limits; or when the trust is otherwise terminated. At that time, any income amounts accumulated in the trust shall be paid over to the Division of Medicaid, State of Mississippi, up to the total amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid to Medicaid.
- (B) When requested, the Trustee shall furnish to the Division of Medicaid, State of Mississippi, an annual accounting to show all receipts and disbursements of the trust during the prior calendar year.
- (C) The Trustee shall maintain the trust funds on deposit in a federally insured banking institution.
- (D) No Trustee shall receive a Trustee's fee for services rendered to the trust, however, reasonable bank charges will be allowed.
- (E) The Trustee shall give written notice to the Division of Medicaid, State of Mississippi when the Settlor dies or when the trust is otherwise terminated.
- (F) The provisions of this Trust shall be interpreted under the laws of the State of Mississippi.

The effective date of this trust shall be \_\_\_\_\_.

IN WITNESS WHEREOF, this \_\_\_\_\_ Income Trust Agreement

has been executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Settlor

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said county and state, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, within my jurisdiction, the within named \_\_\_\_\_, who acknowledged that (he) (she) executed the above and foregoing instrument.

\_\_\_\_\_  
(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said county and state, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, within my jurisdiction, the within named \_\_\_\_\_, who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

\_\_\_\_\_  
(NOTARY PUBLIC)

MY COMMISSION EXPIRES:



***TRUSTEE INFORMATION:***

NAME: \_\_\_\_\_ SSN: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

RELATIONSHIP TO SETTLOR: \_\_\_\_\_

## **INCOME TRUST HELP SHEET**

Section 1917 (d) of the Social Security Act (42 U.S.C. §1396 p (d) (4)) defines certain provisions that qualify as an exception for the purpose of an individual qualifying for Medicaid benefits. One such exception is an "Income Trust". This type of trust, established for the benefit of an individual in a nursing facility, must meet the following requirements.

1. The purpose of the trust is to allow an individual with excess income who has exhausted all available resources to become eligible for Medicaid. The trust may be used only for income belonging to the individual. No resources (assets) may be used to establish or augment the trust. Inclusion of resources voids the trust exception.
2. Funds subject to the trust are all income due the individual from all sources such as Social Security, pension benefits, interest and any and all other types/sources of income.
3. Income Trusts, once accepted by Medicaid, cannot be modified without Medicaid's approval. Trusts must specify that the trust will terminate at the individual's death, when Medicaid eligibility is terminated, when the trust is no longer necessary or in the event the trust is otherwise terminated. Trusts may need to be terminated prior to an individual's death due to changes in the client's income or changes in Medicaid policy regarding how certain income must be counted or in the event the individual is discharged from the nursing facility.
4. If the income of the Settlor is less than Settlor's cost of care at the nursing facility, all income of the Settlor, less authorized deductions, must be paid directly to the nursing facility. In that case no funds will be retained in the Trust. If the income of the Settlor exceeds the cost of care at the nursing facility, the Trust must retain the income in excess of the cost of care.
5. At the dissolution or termination of the trust, the death of the Settlor, loss of the Settlor's Medicaid eligibility or in the event that the Settlor's income no longer exceeds the current Medicaid income limits, the trust agreement must provide that all amounts remaining in the trust up to an amount equal to the total medical assistance paid by Medicaid on behalf of the individual that has not previously been repaid will be paid to the Division of Medicaid.
6. In addition the trust agreement must provide that at the time of each review of the Settlor's Medicaid eligibility (at least annually) while this trust is in existence, when notified by Medicaid, the Trustee must pay to the Division of Medicaid the amount that should be accumulated in the trust up to the amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid. Failure to make the requested payments may result in the loss of Medicaid eligibility for the Settlor.
7. The trust agreement must provide for an accounting to be sent to the Division of Medicaid when requested to show all receipts and disbursements of the trust during the prior calendar year when requested by Medicaid.

8. No fees are allowed to be paid to the Trustee for their service. In the event funds are retained in the trust, administrative fees are limited to \$10 per month and are intended to cover any bank charges required to maintain the trust account.
9. Any disbursements not approved by Medicaid or provided for by the trust agreement will result in a loss of the trust exemption.
10. The trust instrument must specify an effective date. Unless the applicant is requesting retroactive eligibility of up to 90 days (which will require that the applicant have the funds necessary to fund the trust for that period) the effective date will be the date of execution. If a retroactive date is being sought the effective date will be determined through consultation with the Medicaid Regional Office. In that case the Regional Office should be consulted to determine the effective date prior to execution of the agreement.
11. Medicaid requires that the trust document be filed in the records of the Chancery Clerk.

An Income Trust is a very simple trust that accomplishes the specific goal of receiving income and disbursing it for the sole purpose of allowing an individual in a nursing facility with income in excess of Medicaid income limits to qualify for Medicaid. It is not intended to be a complex fiduciary trust. For more information, attorneys drafting an Income Trust may contact the Division of Medicaid's Legal Unit at (601) 359-6050.

**HOME AND COMMUNITY BASED SERVICES WAIVER (HCBS)**  
**INCOME TRUST**

**THE \_\_\_\_\_ INCOME TRUST**

WHEREAS, \_\_\_\_\_, hereinafter referred to as the  
Settlor, now has a monthly income that exceeds the current Medicaid income limits, and;

WHEREAS, Settlor's other assets have been exhausted by the expenses of the  
Settlor's care, and;

WHEREAS, the principal purpose of this Trust is to receive all income payments  
due Settlor, including Social Security benefits, retirement benefits, interest, dividends, or  
other income, and to allow the Trustee to expend for the benefit of the Settlor each month  
an amount equal to no more than \$1.00 less than the then current Medicaid limit, with  
any excess income to be retained as a part of the Trust.

**WITNESSETH:**

This \_\_\_\_\_ Income Trust Agreement is entered into  
between \_\_\_\_\_, "Settlor", and \_\_\_\_\_, "Trustee", who  
agree as follows:

- (A) The Trustee shall place all income due the Settlor into the Trust, and  
the Trustee shall hold such income under the following terms and  
conditions:
  - (1) Trustee shall distribute to the Settlor, or for Settlor's benefit, any  
amounts allowed by the Division of Medicaid, but the total amount

distributed each month shall not exceed an amount equal to \$1.00 less than the then current Medicaid income limit.

- (2) At the time of each review of the Settlor's Medicaid eligibility (at least annually) while this trust is in existence, the Division of Medicaid will notify the Trustee of the amount that should be accumulated in the trust. The Trustee will then be requested to make payment of this amount to the Division of Medicaid up to the total amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid to Medicaid. Failure to make the requested payments may result in the loss of Medicaid eligibility for the Settlor.
  - (3) This trust will terminate upon the death of the Settlor; when the Settlor's Medicaid eligibility is terminated; when the Settlor's income no longer exceeds the current Medicaid income limits; or when the trust is otherwise terminated. At that time, any income amounts accumulated but undistributed shall be paid over to the Division of Medicaid, State of Mississippi, up to the total amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid to Medicaid.
- (B) When requested, the Trustee shall furnish to the Division of Medicaid, State of Mississippi, an annual accounting to show all receipts and disbursements of the trust during the prior calendar year.
  - (C) The Trustee shall maintain the trust funds on deposit in a federally insured banking institution.
  - (E) No Trustee shall receive a Trustee's fee for services rendered to the trust, however, reasonable bank charges will be allowed.
  - (F) The Trustee shall give written notice to the Division of Medicaid, State of Mississippi when the Settlor dies or when the trust is otherwise terminated.
  - (F) The provisions of this Trust shall be interpreted under the laws of the State of Mississippi.

The effective date of this trust shall be \_\_\_\_\_.

IN WITNESS WHEREOF, this \_\_\_\_\_ Income Trust Agreement

has been executed on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Trustee

\_\_\_\_\_  
Settlor

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said county and state, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, within my jurisdiction, the within named \_\_\_\_\_, who acknowledged that (he) (she) executed the above and foregoing instrument.

\_\_\_\_\_  
(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

**STATE OF** \_\_\_\_\_

**COUNTY OF** \_\_\_\_\_

Personally appeared before me, the undersigned authority in and for said county and state, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, within my jurisdiction, the within named \_\_\_\_\_, who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

\_\_\_\_\_  
(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

TRUSTEE INFORMATION:

NAME: \_\_\_\_\_ SSN: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

RELATIONSHIP TO SETTLOR: \_\_\_\_\_

## **INCOME TRUST HELP SHEET**

Section 1917 (d) of the Social Security Act (42 U.S.C. §1396 p (d) (4)) defines certain provisions that qualify as an exception for the purpose of an individual qualifying for Medicaid benefits. One such exception is an "Income Trust". This type of trust, established for the benefit of an individual participating in a Home and Community Based Services (HCBS) waiver, must meet the following requirements.

1. The purpose of the trust is to allow an individual with excess income who has exhausted all available resources to become eligible for Medicaid. The trust must be composed only of income belonging to the individual. No resources may be used to establish or augment the trust. Inclusion of resources voids the trust exception.
2. The trust must be composed only of income due the individual from all sources such as Social Security, pension benefits, interest and any and all other types/sources of income. The individual's right to receive income should not be transferred to the trust; instead, the individual must first receive the income and then place it into the Income Trust.
3. Income Trusts, once qualified, cannot be modified without the approval of the Division of Medicaid. Trusts must specify that the trust will terminate at the individual's death, when Medicaid eligibility is terminated, when the trust is no longer necessary or in the event the trust is otherwise terminated. Trusts may need to be terminated prior to an individual's death due to changes in the client's income or changes in Medicaid policy regarding how certain income must be counted or in the event the individual is discharged from the nursing facility.
4. The Trust must distribute to the Settlor, or for his/her benefit, an amount equal to not more than \$1 less than the then current Medicaid income limit as approved by Medicaid. The trust should not specify the amount of the individual's income as this amount may change each year and the amount to be released from the trust will change to an amount equal to \$1 less than the current Medicaid income limit.
5. At the dissolution or termination of the trust, the death of the Settlor, loss of the Settlor's Medicaid eligibility or in the event that the Settlor's income no longer exceeds the current Medicaid income limits, the trust agreement must provide that all amounts remaining in the trust up to an amount equal to the total medical assistance paid by Medicaid on behalf of the individual that has not previously been repaid will be paid to the Division of Medicaid.
6. In addition the trust agreement must provide that at the time of each review of the Settlor's Medicaid eligibility (at least annually) while this trust is in existence, when notified by Medicaid, the Trustee must pay to the Division of Medicaid the amount that should be accumulated in the trust up to the amount expended by the Division of Medicaid on behalf of the Settlor that has not previously been repaid. Failure to make the requested payments may result in the loss of Medicaid eligibility for the Settlor.



7. The trust agreement must provide for an accounting to be sent to the Division of Medicaid when requested to show all receipts and disbursements of the trust during the prior calendar year when requested by Medicaid.
8. No fees are allowed to be paid to the Trustee for their service. Administrative fees are limited to \$10 per month intended to cover any bank charges required to maintain the trust account.
9. Any disbursements not approved by Medicaid or provided for by the trust agreement will result in a loss of the trust exemption.
10. The trust instrument must specify an effective date. Unless the applicant is requesting retroactive eligibility of up to 90 days (which will require that the applicant have the funds necessary to fund the trust for that period) the effective date will be the date of execution. If a retroactive date is being sought the effective date will be determined through consultation with the Medicaid Regional Office. In that case the Regional Office should be consulted to determine the effective date prior to execution of the agreement.
11. Medicaid requires that the trust document be filed in the records of the Chancery Clerk.

An Income Trust is a very simple trust that accomplishes the specific goal of receiving income and disbursing it for the sole purpose of allowing an individual participating in a Home and Community Based Services (HCBS) waiver with income in excess of Medicaid income limits to qualify for Medicaid. It is not intended to be a complex fiduciary trust. For more information, attorneys drafting an Income Trust may contact the Division of Medicaid's Legal Unit at (601) 359-6050.